Supreme Court, U. S.
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No. 77-768

In the

Supreme Court of the United States

OCTOBER TERM, 1977

THE COUNTY OF COOK, a body politic and corporate, and SIDNEY R. OLSEN, Registrar of Titles,

Petitioners,

vs.

UNITED STATES OF AMERICA,

and

JOHN NEAL AND ROSA NEAL AND MINNESOTA MUTUAL LIFE INSURANCE COMPANY,

Respondents.

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable Frank J. McGarr

Cause No. 71 C 617 Date 11/3/72

Title of Cause
United States of America v. Anne Davis, et al.

Pursuant to memorandum opinion and order entered this day, the court grants plaintiff's motion for a sum-

mary judgment in the amount of $23,061.53, plus interest and finds that the United States has a valid and subsisting lien in that amount against an undivided one-half interest in the real property commonly known as 7932 South Chappell Avenue.—Draft

/s/ Frank J. McGarr
Judge

Date: Nov. 8, 1972

IN THE UNITED STATES DISTRICT COURT
for the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANNE DAVIS, JOHN NEAL, ROSA L. NEAL and MINNESOTA MUTUAL LIFE INSURANCE COMPANY,

Defendants.

No. 71 C 617

MEMORANDUM OPINION AND ORDER

In this action, the United States Government is seeking to foreclose a federal tax lien against certain real property. At this point in the proceedings, the plaintiff United States has moved for a summary judgment. Both sides agree that the only issue of fact or law involves the question of whether the notice filed on March 29, 1966 1966 with the Cook County Recorder of Deeds successfully created a federal tax lien against a subsequent purchaser and mortgagee. Before this issue is discussed, however, it is important that the factual chronology be clearly understood.

The primary defendant, Anne Davis, is the daughter of David J. Pleason. The Internal Revenue Service made assessments for unpaid federal income taxes against Pleason for the years 1943 and 1944. These assessments

were sustained in *Pleason* v. *Commissioner*, 22 T.C. 361 (1954), aff'd., 226 F. 2d 732 (C.A. 7, 1955), *cert. denied*, 350 U.S. 1006.

In 1959, Pleason transferred to Anne Davis, his daughter, a shrimp boat, the O/S Doctor Walling. Pursuant to Section 6901 of the Internal Revenue Code, the Service served a statutory notice of deficiency upon Anne Davis, asserting a liability against her as a transferee of the assets of Pleason, to the extent of the value of the boat. Mrs. Davis duly filed her petition in the Tax Court of the United States, which on November 10, 1964, entered a decision finding that Anne Davis owed $16,905.92, plus assessed interest, as a transferee. No appeal was taken to the Court of Appeals, so that in accordance with Sections 6214 and 6215 of the Internal Revenue Code, the Internal Revenue Service made an assessment against Anne Davis on March 12, 1965, for tax in the amount of $16,905.92 and interest in the amount of $6,155.61. The facts underlying the transferee assessment may be found in the reported Tax Court opinion (as distinguished from the Tax Court decision), at *Anne Davis* v. *Commissioner*, T.C. Memo. 1964-244.

The United States seeks to foreclose its federal tax lien upon property located at 7932 South Chappell Avenue, Chicago, Illinois. The United States alleges, and apparently no other party disputes, that Frank T. and Pearl B. Pajkowski conveyed the property to Anne Davis and Mary Ginsberg, as tenants in common, by a deed recorded on August 9, 1943, that Anne Davis and Mary Ginsberg conveyed the property to the defendants John and Rosa L. Neal by a deed recorded on January 19, 1968, that John and Rosa Neal gave a mortgage on this property to O'Brien and Pain, Inc., by a deed recorded on January 19, 1968, and that O'Brien and Pain, Inc., assigned this mortgage to the defendant Minnesota Mutual Life Insurance Company by an instrument recorded on February 2, 1968.

On March 29, 1966, the Internal Revenue Service filed a notice of federal tax lien against all property and rights to property of Anne Davis, in the office of the Recorder of Deeds of Cook County, Chicago, Illinois. In accordance with Section 6323(g) of the Internal Revenue Code, this notice was refiled in the same office on March 10, 1971.

Defendants allege that the property located at 7932 South Chappell Avenue was registered under the Torrens Act and that plaintiff's filing of a federal tax lien in the office of the Cook County Recorder of Deeds was ineffective to give defendants John and Rosa Neal and Minnesota Mutual Life Insurance Company notice of that lien. The pivotal date, however, is not the date of notice filing, March 29, 1966, as defenandts suggest, but rather the date that the property was conveyed to defendants by deed, January 19, 1968. Between these two dates, the Illinois legislature intervened.

On March 29, 1966, Section 127 of Chapter 30 Illinois Revised Statutes provided in part:

> "No statutory or other lien (including the liens of mechanics) shall be deemed to affect the title to registered land until a memorial thereof is entered upon the register as herein provided. . . ."

The same section was amended in 1967 to read:

> "No statutory or other lien (including the liens of mechanics), except liens for internal revenue taxes, payable to the United States of America, shall affect the title to registered land until after a memorial thereof is entered upon the register as herein provided. . . ."

The addition of the phrase "except liens for Internal Revenue taxes" is significant in that a purchaser searching title under the Torrens Act is guaranteed that there are not outstanding impediments to a clear title which are not recorded in the Torrens register except federal tax liens. In other words, there can be an outstanding

federal tax lien which does not appear on the Torrens register. Therefore, this clause puts the prospective buyer on notice that he should look somewhere else to insure that no federal tax lien exists against the property which he intends to purchase. In the case at hand, "somewhere else" was the office of the Cook County Recorder of Deeds where a valid notice had been on file since March 29, 1966.

Traditionally, the great advantage offered by the Torrens system was that a prospective buyer need only check one place to be apprised of the status of a title. The court sympathizes with the confusing situation which resulted from the 1967 amendment to the Torrens Act requiring that prospective purchasers check someplace other than Torrens for federal tax liens. However, the amended version of the Torrens Act was in effect in 1968 when the defendants began their search for the status of the title to 7932 South Chappell Avenue. Thus the defendants were under an obligation to ascertain whether there was a valid tax lien against the property in question and they took title subject to lien.

There being no other issues of fact or law in dispute, the court grants plaintiff's motion for a summary judgment in the amount of $23,061.53, plus interest and finds that the United States has a valid and subsisting lien in that amount against an individed one-half interest in the real property commonly known as 7932 South Chappell Avenue.

ENTER:
/s/ Frank J. McGarr
United States District Judge

Dated: November 3, 1972

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable Frank J. McGarr

Cause No. 71 C 617 Date 4/7/76

Title of Cause — United States v. Anne Davis, et al. v. County of Cook, et al.

Notes: Pursuant to memorandum opinion and order entered this day, the motion of the United States for the entry of a judgment of foreclosure is granted, and the motion of defendants-third party plaintiffs John Neal, Rosa Neal and Minnesota Mutual Life Insurance Company for summary judgment against The County of Cook and Sidney R. Olsen, Registrar of Titles, Cook County, is granted.—DRAFT

/s/ Frank J. McGarr

IN THE UNITED STATES DISTRICT COURT

• • (Caption — No. 71 C 617) • •

MEMORANDUM OPINION AND ORDER

This case is presently before the Court on the motion of the plaintiff, The United States of America, for the entry of judgment of foreclosure and on the motion of defendants-third party plaintiffs, Minnesota Mutual Life Insurance Company, John Neal and Rosa Neal, for summary judgment against third-party defendants County of Cook and Sidney R. Olsen, Registrar of Titles.

The motion of the United States is brought pursuant to the entry of this Court's memorandum opinion and order dated November 3, 1972, which was vacated on December 12, 1973, and subsequently reinstated on March 8, 1974. In that memorandum, the Court found that the United States held a valid and subsisting lien against an undivided one-half interest in the real property com-

monly known as 7932 South Chappell Avenue, Chicago, Illinois. Accordingly, the motion for entry of a decree of foreclosure is granted.

The third-party plaintiffs' motion arises out of the following factual situation. The property described above is property registered in the system commonly known as the Torrens system. The third-party plaintiffs are purchasers and the assignee-mortgagee of the property. The purchasers received an Owner's Duplicate Certificate of Title which bore no memorial on its face with respect to the tax lien of the United States. The mortgagee received a similar certificate entitled, Mortgagee's Duplicate Certificate of Title. These parties now seek reimbursement from the County of Cook and the Registrar of Titles under Ch. 30, Ill.Rev.Stats. §138, which provides as follows:

> Any person sustaining loss or damage through any omission, mistake or misfeasance of the registrar, or any examiner of titles, or of any deputy or clerk of the registrar in the performance of their respective duties under the provisions of this act, and any persons wrongfully deprived of any land or any interest therein, through the bringing of the same under the provisions of this act . . . or by any mistake, omission or misdescription . . . shall have a right of action for the damages thus sustained against the county in which such land shall be registered. . . .

The only question present in this case is whether failure of the registrar to record a tax lien not recorded with his office is the type of "omission, mistake or misfeasance" encompassed by the statute.

Chapter 30, Ill.Rev.Stats. §84, places an affirmative duty on the Registrar of Titles as follows:

> *At the time of and as of the date of issuing any certificate of title* or of the entry upon the register of titles of any memorial relating to registered property, *the Registrar of Titles shall search for and*

enter upon the proper folium of the register of titles *memorials* as to the following charges, insofar as the specific property described in such certificate of title is affected or concerned, to wit:

(b) Notices of liens found to be recorded in the office of the *recorder of deeds* for internal revenue taxes payable to the United States of America. . . . (emphasis added)

This duty was in effect at the time the certificates of title were issued. The defendants have admitted in their answer to the Amended Complaint that the Notice of Lien was filed with the recorder of deeds as alleged. It is further admitted that the Registrar of Titles issued a federal tax lien search showing the property as free and clear of all federal tax liens. Finally, it is admitted that the Registrar of Titles issued to John and Rosa Neal an Owner's Duplicate Certificate of Title and to Minnesota Mutual Life Insurance a Mortgagee's Duplicate Certificate of Title, both certificates lacking memorials with respect to the federal tax lien in question.

We find that issuance of certificates of Title as outlined above is the type of omission or mistake in the performance of the duties of the Registrar of Titles contemplated by Ch. 30, Ill.Rev.Stats. §138. Therefore, the third-party plaintiffs are entitled to summary judgment.

In accordance with the above, the motion of the United States for the entry of a judgment of foreclosure is hereby granted, and the motion of defendants-third party plaintiffs John Neal, Rosa Neal and Minnesota Mutual Life Insurance Company for summary judgment against The County of Cook and Sidney R. Olsen, Registrar of Titles, Cook County, is hereby granted.

ENTER:
/s/ Frank J. McGarr
United States District Judge

Dated: April 7, 1976

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable Frank J. McGarr

Cause No. 71 C 617 Date June 7, 1976

Title of Cause — U.S.A. vs. John Neal, et al. vs. County of Cook, et al.

Brief Statement of Motion — Hearing and prove up.

Notes: Evidence and argument are heard and concluded on petitions for attorneys fees and costs. Defendant-third party plaintiff, Minnesota Mutual Life Insurance Company, by Siebel & Siebel, its attorneys, is allowed attorneys fees in the amount of $3,750.00 and costs in the amount of $109.88. Defendants and third-party plaintiffs, John Neal and Rosa L. Neal.

/s/ McGarr, J.

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable Frank J. McGarr

Cause No. 71 C 617 Date June 7, 1976

Title of Cause — U.S.A. vs. John Neal, et al. vs. County of Cook, et al.

Notes: by their attorney Allen J. Sucherman, is allowed attorneys fees in the amount of $3,750.00 and costs in the amount of $65.98.

/s/ McGarr, J.

UNITED STATES DISTRICT COURT

• • (Caption — Civil No. 71 C 617) • •

JUDGMENT

Pursuant to the respective motions for summary judgment of the parties herein, it is hereby Ordered, as follows:

1. That the plaintiff the United States of America has judgment against the defendant Anne Davis for unpaid federal taxes and interest in the amount of $33,762.13, plus additional interest thereon according to law from September 1, 1975, until the date of payment;

2. That the United States has a valid lien upon all property and rights to property of Anne Davis, in the amount necessary to satisfy the foregoing liability;

3. That the lien of the United States for upaid federal taxes presently encumbers an undivided one-half interest in a parcel of real property in Cook County, Chicago, Illinois, described as follows:

> Lots Nineteen (19) and Twenty (20) in Block Two (2) in B. F. George's Subdivision of the northwest quarter of the northwest quarter of the northeast quarter of Section 36, Township 38 North, Range 14 East of the Third Principal Meridian,

and commonly referred to as 7932 South Chappell Avenue, Chicago, Illinois.

4. That the federal tax lien upon the property located at 7932 South Chappell Avenue is hereby foreclosed.

5. That the third-party defendants The County of Cook and Sidney R. Olsen, Registrar of Titles, are directed to pay to the plaintiff the United States the total sum of $9,000, together with interest according to law from the date of the entry of this Judgment, in full satisfaction of the plaintiff's lien interest in the aforedescribed property at 7932 South Chappell Avenue, and in discharge of the obligation of the third-party defendants The County of Cook and Sidney R. Olsen, Registrar of Titles, to the initial defendants John and Rosa Neal and Minnesota Mutual Life Insurance Company, as set forth in the Order of this Court of April 7, 1976, except for the awards for fees and costs, as set forth in Paragraphs 7 and 8 below.

6. That the aforedescribed $9,000, and any interest thereon, shall when paid be applied as a credit upon the judgment liability of the defendant Anne Davis set forth in Paragraph 1, above.

7. That the County of Cook and Sidney R. Olsen, Registrar of Titles, are indebted to the defendants John and Rosa Neal in the amount of $3,750, plus costs of $65.93, in accordance with the Order of this Court of June 7, 1976.

8. That The County of Cook and Sidney R. Olsen, Registrar of Titles, are indebted to the defendant Minnesota Mutual Life Insurance Company in the amount of $3,750, plus costs of $109.88, in accordance with the Order of this Court of June 7, 1976.

9. That all other claims in this proceeding are dismissed.

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United States District Judge

Date: August 6, 1976